IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1131 OF 2005
WITH
CIVIL APPLICATION NO.1403 OF 2005

Associated Corpn. of Industries
(India) Pvt.Ltd. ..Appellant.

V/s.

Concord Barges P.Ltd. & Anr. ..Respondents.

Mr.Denzil D'mello for appellant.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 25, 2006.

P.C. :

1. Heard counsel for the appellant.

2. I see no reason to depart from the opinion expressed by the court below while rejecting the claim of the appellant for withdrawal of the amount. On fair reading of the order of this court dated 19th July, 2005 in the Chamber summons No.74 of 2003, it is obvious that this court has observed that the appellant would be entitled to apply for withdrawal of the amount after it succeeds in establishing its right with regard to the suit claim. The fact that the court below has directed the defendant to deposit amount towards the rent by itself will not establish the fact that the appellant/plaintiff has right to

recover that amount. The appellant/plaintiff will have to finally establish that right so as to be entitled for withdrawal of that amount, in terms of order dated 19th July, 2004. As the court below in the impugned judgment has proceeded on that basis, there is no substance in this appeal. Accordingly, appeal as well as civil application is dismissed.

3. At this stage, counsel for the appellant/-plaintiff submits that as the defendants are not contesting the suit, atleast hearing of the suit be expedited. This request of the appellant can be acceded to. Accordingly, it is ordered that Suit pending before the trial court be proceeded further expeditiously as High court expedited case.